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July 3, 2019

Honorable Jeffrey Bossert Clark
Assistant Attorney General of the Environment and Natural Resources Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

CC: Representative Dan Newhouse
Representative Cathy McMorris Rodgers
Dan Wood, Washington State Dairy Federation
Rick Naerebout, Idaho Dairymen's Association
Tami Kerr, Oregon Dairy Farm Association
Regional Administrator Christopher Hladick
Associate Administrator Tate Bennett

Dear Mr. Clark:

This is to request an investigation of the actions of the staff of Region 10 of the Environmental Protection Agency. In the conduct of official EPA business, this staff lied to the Region 10 administrator in the presence of several representatives of the farming community about the nature of peer review of a very significant science report. Then, when the false characterization of the peer review was revealed to the administrator, this staff attempted to change the categorization of the science study from "influential science information" to "other," to justify the failure to follow EPA policy requiring substantial peer reviews for science studies of this nature.

Title 18 of the US Code states: "whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact; makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false

writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry.” The penalty for this violation of federal law carries a penalty of up to five years in prison.

To understand the significance of this action by staff, please consider the following facts:

- In 2010 EPA Region 10 initiated a science study whose clear intent from the outset was to prove that dairy farms in the Yakima Valley were responsible for nitrate levels above EPA limits, despite the fact that nearly the entire Southeast Washington, most of it devoid of dairies, contains similar or higher levels of nitrate in groundwater.
- The report issued in 2012, then reissued in 2013 was universally determined to be false by more than 15 science experts from tribes, state government, academia and agricultural science organizations.
- The study was designated as “influential science information” by EPA staff on 09/27/2012 when limited portions were released for peer review, then again identified as “influential” when EPA staff published a response to the very strong criticisms of the study and report on March 2013.
- EPA staff failed to follow EPA and OMB policy for peer reviews by providing only a limited version of the study and conclusions as well as including insufficient reviewers. The review was completed by two internal EPA reviewers and one external reviewer. The reviewer from USGS was critical of the study noting the same objections that the outside experts noted which were ignored by EPA. The USDA reviewer, Dr. David Tarkalson, asked that he be removed as a reviewer after he discovered that staff provided a very limited version of the study with significant information and conclusions missing.
- Despite warnings from other government agencies that the study did not warrant use for enforcement, EPA Region 10 staff coerced three dairy farms into signing an Administrative Order on Consent. One farm went out of business rather than sign the Order, two others are on the verge of bankruptcy, and the only farm to substantially comply has spent upwards of \$10 million to date – expenditures made possible only because of other substantial family businesses.
- The study is used by an environmental attorney with close ties to the Region 10 staff as the basis for numerous “citizen” lawsuits against dairy farms causing a number to sell out or move to other states. In short, this study is a major contributor to the accelerating loss of family dairy farms in Washington state.
- On November 1, 2018, a number of farm representatives met with the new Region 10 Regional Administrator Christopher Hladick and members of his staff including Edward Kowalski, Eric Winiecki and Lucy Edmondson. When the Regional Administrator learned of the farmers’ concerns about the validity of the study, he asked Mr. Winiecki, the science study project manager, if it had been peer reviewed. Mr. Winiecki replied,

“Yes, a thorough and complete review.” When he was challenged on this with facts including the withdrawal of Dr. Tarkalson as a reviewer, he stated, “He never gave a reason for his removal.” Mr. Winiecki was then shown a letter, included among the documents critical of the study on EPA’s web page, that listed the reasons for his withdrawal. As Mr. Winiecki was shown to falsely characterize the peer review, we believe this false statement triggered the action of staff to attempt to change the record of classification from “Influential” to “Other,” thereby justifying the failed peer review.

- Following Regional Administrator Hladick’s request, farm representatives again met with EPA staff (Mr. Winiecki was ill and could not attend), to discuss the study and the peer review. At that time, Mr. Kowalski stated that study had been categorized “Other,” not “Influential,” and therefore allowed staff full discretion in the level of peer review. He was asked who designated that and when, and he and other staff indicated complete ignorance of these facts.
- On April 2, 2019 in a meeting with Mr. Edward Kowalski, Ms. Lucy Edmondson and Regional Administrator Hladick Save Family Farming president Larry Stap and Washington State Dairy Federation policy director Jay Gordon presented the two documents showing the study was designated “Influential Science Information.” These included the “Peer Review Plan” submitted by Michael Cox on 09/27/2012 and page 35 of the “Response” document published by staff in March 2013. Mr. Kowalski stated he had never seen those documents before. We believe this is an additional false statement as it does not seem likely that Mr. Kowalski, as long time head of Region 10’s Compliance and Enforcement, was not involved in the initial categorization and in reviewing the “Response” document that was developed as a response to the severe criticism of the study.

It is our understanding that failing to follow EPA and federal policy on peer review for science information that has massive impact on an industry does not violate federal law. But it appears clear that lying to a senior federal official and citizens about the nature of the review done, then attempting to change the categorization after the fact to justify the failure to follow policy does violate federal law.

This false study is a primary tool of the environmental litigation industry to use the citizen lawsuit provisions of the Clean Water Act and the Resource Conservation Recovery Act against our dairy farmers. It is also used in the continuing litigation against the Washington State Department of Ecology in an effort to impose massive regulations on dairy farms that would all but destroy the dairy farm community in our state. Currently, dairy is the state’s second largest farm commodity after apples. Your office’s letters of May 18, 2018 regarding *Garcia vs. Miller Castings* and *Lares vs. Reliable Wholesale Lumber* indicate that this administration has limited patience for the abuse of the court system involving citizen lawsuits. We strongly encourage you to also investigate the numerous examples of this abuse involving dairy litigation filed by attorney Charlie Tebbutt as well as the numerous citizen cases filed by Smith & Lowney of Seattle.

Thank you for your consideration of this request and we stand ready to assist in any way we can.

Sincerely, on behalf of Region 10 dairy farmers,

A handwritten signature in black ink, appearing to read 'G. Baron', followed by a long horizontal flourish.

Gerald Baron
Executive Director, Save Family Farming